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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women
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Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women

List of issues and questions in relation to the eighth periodic report of Kenya

Constitutional and legislative framework and harmonization of laws

1. In its eighth periodic report, the State party indicates that section 2 (6) of the Constitution provides for the domestication and applicability of the provisions of the Convention by providing that any treaty or convention ratified by the State party is to form part of the law (CEDAW/C/KEN/8, para. 8).[1] Nevertheless, under the Treaty Making and Ratification Act of 2012, the State party still maintains the discretion to implement international laws through Parliament, such that international norms and practices that are contrary to "people's beliefs and customs can be avoided through parliamentary intervention through article 93 (5) of the Constitution" (ibid., para. 9). Please clarify the status of the Convention in terms of its legal order in the State party and whether the provisions of the Convention have ever been invoked by the courts of the State party.

2. In its previous concluding observations (CEDAW/C/KEN/CO/7, para. 11), the Committee expressed concern that, under article 170 of the Constitution, which established Kadhi courts with jurisdiction over matters of Islamic personal law, including inheritance, exemptions from the equality provisions provided in the Constitution were allowed. In accordance with the obligations of the State party under articles 1 and 2 of the Convention, and in line with target 5.1 of the Sustainable Development Goals, to end all forms of discrimination against all women and girls everywhere, please provide information on steps being taken to

Note: The present document is being circulated in English, French and Spanish only.

[1] Unless otherwise indicated, paragraph numbers refer to the eighth periodic report of the State party.

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amend article 170 to ensure that such courts are not exempted from constitutional equality provisions, given that such exemptions may disproportionately affect women and girls. Please also provide an update on the progress made to harmonize laws by addressing the conflict between statutory law, customary law and Islamic law in the State party, in particular with regard to marriage, divorce, inheritance and access to land.

Access to justice

3. In its previous concluding observations (CEDAW/C/KEN/CO/7, para. 13), the Committee expressed concern, in line with its general recommendation No. 33 (2015) on access to justice, about factors limiting women's access to justice, such as legal costs, the persistence of traditional justice systems, illiteracy, a lack of information about their rights and other practical difficulties in gaining access to courts. The Committee noted that the State party had established a pilot national legal aid and awareness programme in six regions. Please provide information on: (a) the financing of that programme and the extent of its coverage, especially in rural areas and marginalized communities such as slums; and (b) whether legal aid is available for civil matters, including in cases of domestic disputes. Please also provide information on women's access to justice, especially in those areas in which dispute resolution is governed by customary and Islamic law. Please clarify the hierarchy among statutory law, customary law and Islamic personal law, their respective scope and any provisions governing their coexistence. Please state whether decisions rendered by Kadhi courts are subject to appeal in civil courts.

Women and peace and security

4. In the light of the Committee's general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations and Security Council resolution 1325 (2000) and related resolutions on women and peace and security, please provide information on measures taken to address obstacles, including legal, social, political or institutional obstacles, that hamper the participation of women in conflict prevention, management and resolution. Please also provide information on the impact of the insurgency waged by Al-Shabaab on women and girls. In particular, please provide information on measures taken: (a) to introduce early warning systems in order to protect women and girls; (b) to protect women and girls from radicalization and violent extremism, including information on any deradicalization programmes that have been put in place; and (c) to provide medical, psychosocial and rehabilitative services to women and girls, in particular asylum-seeking women, who are victims of conflict-related violence.

National machinery for the advancement of women

5. It is indicated in the report that the State party has established the National Gender and Equalities Commission and that the Directorate of Gender in the Ministry of Devolution and Planning is responsible for the overall coordination of gender mainstreaming (paras. 33 and 34). Please provide detailed information on the national strategy for the advancement of women and the implementation of target 5.1 of the Sustainable Development Goals. Please provide information on the current state of the human and financial resources allocated to each of these institutions and their areas of complementarity. Please also provide information on progress

achieved following the deployment of gender officers to all ministries, in particular with regard to gender mainstreaming and gender-responsive budgeting. In addition, please provide information regarding the existing system for the collection, sharing and analysis of data disaggregated by sex, age, ethnicity and disability pertaining to all areas covered by the Convention.

Temporary special measures

6. It is stated in the report that, following the ruling of the Supreme Court on advisory opinion No. 2 of 2012 on article 81 (b) of the Constitution, which provides that no more than two thirds of the members of elective public bodies are to be of the same gender, the Attorney General established a technical working group to implement the Court's decision. The ruling passed down by the Court required Parliament to enact a legislative framework for the realization of article 81 (b) by August 2015 (paras. 38 and 39). Please provide information on the specific steps taken to implement the decision. In accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, please also provide information about other existing temporary special measures to accelerate the realization of de facto equality of women with men, especially in employment, and to tackle intersecting forms of discrimination faced by disadvantaged groups of women, including rural women, women with disabilities and refugee and indigenous women. It is stated in the report that the Public Procurement and Disposal Preference and Reservations Amendment Regulations of 2013 provide that a procuring entity is to allocate at least 30 per cent of its procurement budget for purposes of procuring goods, works services to microenterprises and small enterprises owned by women, young people and persons with disabilities (para. 45). Please provide data on the number of microenterprises and small enterprises owned by women that have benefited from this policy. What is the status of the bill on access to government procurement opportunities, which is intended to establish this policy?

Stereotypes and harmful practices

7. In its concluding observations on the combined fifth and sixth periodic reports of the State party (CEDAW/C/KEN/CO/6, para. 21), the Committee expressed concern about the persistence of adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in all spheres of life. Please provide information on priority attention being given to awareness-raising in order to reverse social norms and stereotypical attitudes leading to gender stereotypes and the negative impact of harmful practices at all levels of society, including within the education system, as well as among government officials, media practitioners and traditional and community leaders.

8. It is indicated in the report that, following the enactment of the Prohibition of Female Genital Mutilation Act of 2011, an anti-female genital mutilation board was established in 2013 to coordinate the implementation of the Act (para. 61). Please provide an update on the practical measures taken by the State party, through the coordination role of the Board, to eliminate the harmful practice of female genital mutilation in all regions of the State party, in particular among the Somali, Samburu, Kisii and Maasai communities. Please provide data on the number of

prosecutions, convictions and sanctions imposed on offenders relating to the practice of female genital mutilation, in particular at the county level. What specific measures are being taken to eliminate the harmful practices of: (a) child marriage; (b) polygamy; (c) the raping of girls, known as "beading", which is prevalent among the Samburu ethnic group; and (d) widowhood rites and practices such as wife inheritance?

Gender-based violence against women

9. According to information before the Committee, the Protection against Domestic Violence Act, assented to in May 2015, criminalizes a wide range of gender-based forms of violence, including marital rape and economic and sexual abuse. Since the entry into force of the Act, please provide data on the number of: (a) prosecutions and convictions relating to gender-based violence against women, including domestic violence; and (b) protection orders obtained by women and girls, and the rate of compliance therewith. Please describe the measures taken to raise awareness among women about the criminal provisions on sexual violence provided under the Act. Please also provide information on the human and financial resources allocated to the implementation of the Act and whether a monitoring and evaluation system has been put in place. What steps have been taken to implement the previous recommendation of the Committee for the establishment of counselling and support services for victims of violence, including shelters (see CEDAW/C/KEN/CO/7, para. 24)?

10. In the light of the Committee's previous concluding observations (CEDAW/C/KEN/CO/7, para. 25), please provide information on steps taken to investigate, prosecute and punish perpetrators of sexual and gender-based violence, including instances of rape and gang rape perpetrated in the post-election violence in 2008. What steps have been taken to implement the recommendations of the Commission of Inquiry into the Post-Election Violence, in particular those relating to women and girls? Please state the measures that are being taken to prevent and punish all forms of sexual violence, including gender-based violence, in slums such as Kibera and in camps for internally displaced persons, especially the camps in Dadaab. Please also state the measures in place to ensure that all humanitarian, military and police personnel contributing to international responses to conflict are appropriately trained in the prevention of sexual violence and codes of conduct on sexual exploitation and abuse.

Trafficking and exploitation of prostitution

11. Please provide information on the challenges and achievements in the implementation of the Counter-Trafficking in Persons Act of 2010. Please provide detailed information on the implementation of the Victim Protection Act of 2013. Please also provide data on the number of cases of trafficking in women and girls, in particular the number of investigations, prosecutions and convictions, as well as the sanctions imposed on the perpetrators, during the reporting period, especially with regard to the involvement of government officials. In addition, please provide information on the prevalence of sex tourism and the exploitation of prostitution, in particular trafficking of women to the Middle East, where they are allegedly subjected to abuse, rape and murder (paras. 88, 91 and 93). What specific measures are in place to address these phenomena, including trafficking for labour

exploitation, especially for domestic work? Please state the measures being taken to train all relevant personnel, including law enforcement and border personnel, on the identification of victims of trafficking.

Participation in political and public life

12. Please provide information on the specific steps being taken to address the underrepresentation of women in Parliament, the Senate, the Supreme Court, senior posts in the foreign service and local government, especially in devolved funds committees (paras. 50 and 117). Please also provide information on the steps envisaged to increase the number of women in appointed decision-making bodies and to achieve equal representation of women in political and public life, including through the adoption of measures such as temporary special measures, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25. Specifically, please provide information on the actual measures being taken to implement article 100 of the Constitution, which requires Parliament to enact legislation to promote the representation of, among others, women and other marginalized communities. In the light of the forthcoming general elections in August 2017, please provide information on measures in place to prevent political violence, which often impedes the full participation of women in politics at all levels.

Nationality

13. It is stated in the report that the Kenya Citizenship and Immigration Act, No. 12 of 2011, is restrictive because it provides that a person born outside the State party shall be a citizen by birth if on the date of birth that person's mother or father was or is a citizen by birth and not a citizen by registration (para. 120). In the light of this provision, which the State party acknowledges contradicts article 14 of the Constitution, please state the measures being taken to ensure that women and girls born outside the State party from parents who are citizens by registration are not rendered stateless. Please respond to reports that although, in principle, the Act allows the passing of citizenship equally, in practice refugee and stateless women who marry Kenyan men are not formally granted citizenship. What measures are being taken to address the challenges faced by girls, in particular girls of Nubian descent, including Makonde, Somali and indigenous girls, in obtaining birth registration documents?

Education

14. It is indicated in the report that, although there has been an increase in the number of girls enrolled in secondary school, and in their completion rate, a considerable number of girls still drop out as a result of female genital mutilation, child marriage and the lack of sanitary towels (paras. 133 and 139). It is also indicated in the report that, although the number of women in public universities has shown a slight increase, parity in university education has yet to be attained (para. 134). Please provide information on specific measures being taken to increase the number of women and girls in secondary and university education and to address the root causes of girls dropping out of school. Please provide data on the challenges and achievements in the implementation of policies aimed at encouraging women and girls to take up science, mathematics and technology

(paras. 126 and 127). What measures are being taken to promote inclusive education for women and girls with disabilities in the State party?

15. Please provide an update on the status of measures to combat the abuse of learners, in particular women and girls, by teachers, such as: (a) the development of a learners' protection policy to protect girls from being impregnated by their teachers; and (b) the need to review the Children's Act of 2001 in order to strengthen protection mechanisms, including the protection of girls from all forms of violence, including sexual harassment at school (para. 137). Please also provide information about whether an age-appropriate education programme on sexual and reproductive health and rights for all levels of education has been integrated into curricula in the State party. Please provide information on the measures being taken to ensure that women and girls affected by the conflict caused by the Al-Shabaab insurgency have access to education, including in internally displaced persons camps, such as those in Dadaab. Please state the measures in place to protect students and teachers, in particular girls, from attacks by Al-Shabaab that target educational institutions and to ensure school attendance by girls. Pease provide specific data on school dropout rates for girls following the attack by Al-Shabaab on Garissa University in April 2015.

Employment

16. It is indicated in the report that a vast majority of women in the State party work in the agricultural sector, and that women constitute just 29 per cent of those earning a formal wage, leaving a large majority of women employed in the informal sector (para. 141). In its previous concluding observations, the Committee expressed concern about the wide wage gap between women and men, the high level of child labour among girls and the fact that employers are required to take positive measures to prevent sexual harassment only when they employ 20 or more people (see CEDAW/C/KEN/CO/7, para. 33). Please provide information on the measures taken: (a) to close the wage gap between women and men; (b) to address the concentration of women working in the agricultural and informal sector; (c) to enhance women's opportunities to enter the formal sector; (d) to address the high level of child labour among girls; and (e) to revise the Employment Act of 2007 in order to address sexual harassment in employment at all levels. Please also provide updated information on specific measures taken to protect the rights of women working abroad as domestic workers, especially in the Middle East, and to prosecute and punish unscrupulous owners of employment bureaux who exploit such women (para. 93).

Economic empowerment of women

17. The Committee notes that the National Climate Change Action Plan 2013-2017, launched in March 2013, addresses options for a low-carbon climate-resilient development pathway for the State party. Please provide information on: (a) the participation of women in all decision-making processes on development and economic empowerment, including the development and implementation of climate change strategies; and (b) the mechanisms in place to ensure that strategies on climate change mitigation and adaptation facilitate the implementation of the Sustainable Development Goals, in particular Goal 5 and its targets.

Health

18. The State party, in paragraph 152 of its report, largely attributes the high maternal mortality rate to the fact that women do not give birth under the care of skilled health providers. It is also indicated that the contraceptive prevalence rate is just at 46 per cent and that HIV prevalence is higher among women than men (para. 156). Information before the Committee indicates that the high maternal mortality is also attributable to unsafe abortion practices owing to the State party's restrictive and punitive laws on abortion. Please provide information on the specific measures being taken: (a) to address the high maternal mortality rate, which is attributable to a lack of skilled birth attendants and unsafe abortion practices; (b) to intensify the provision of contraceptives in order to combat HIV transmission; (c) to revise articles 158 to 160, 228 and 240 of the Penal Code in order to decriminalize abortion in all cases and legalize abortion in cases of rape, incest and severe fetal impairment; and (d) to address regional disparities in access to health-care services, in particular for women and girls.

19. It is indicated in the report that fees for all types of health-care services at dispensaries and health centres have been abolished (para. 154). Other reports indicate, however, that, notwithstanding the presidential directive on free maternity services introduced in 2013, the post-child-delivery detention of women and girls who cannot pay their medical bills remains prevalent at hospitals in the State party. Information before the Committee also reveals that access to antenatal, delivery and postnatal care is limited owing to physical and economic barriers. Please state the specific measures in place to address: (a) the limited access to antenatal care, delivery and postnatal care; (b) the detention of mothers when they cannot pay their medical bills after delivery; and (c) the scaling-up of the "Beyond Zero" campaign spearheaded by the First Lady, which has provided mobile clinics to some areas.

Rural women

20. In its previous concluding observations, the Committee expressed concern at the disadvantaged position of women in rural and remote areas, who face difficulties in gaining access to health and social services, and at the lack of their participation in decision-making processes at the community level (CEDAW/C/KEN/CO/7, para. 41). Given that women are concentrated in the agricultural sector, please provide information on the challenges and achievements in the implementation of Agricultural Sector Development Strategy 2010-2020 and on efforts to enhance their participation in community decision-making processes, including in developing policies and legislation in the fields of land management and agriculture. It is indicated in the report that the Law of Succession Act discriminates against women and girls in matters of inheritance because it places some categories of property, such as agricultural land, cattle and crops, under the purview of customary laws, which largely discriminate against women and girls (para. 192). In line with the Committee's general recommendation No. 34 (2016) on rural women, please provide information on measures being taken to repeal the discriminatory provisions of the Act in order to guarantee equal access to agricultural land to women and girls. What efforts are being made under the economic empowerment programme to ensure that rural women have de facto access to agriculture loans and credit facilities (para. 182)? Please also provide information on measures in place: (a) to

facilitate women's access to land and to eliminate all customs that impede equal access to land, in particular land for agricultural use; and (b) to ensure access to safe drinking water and adequate sanitation.

Internally displaced and marginalized groups of women

21. Please provide an update on measures taken to resettle women and girls displaced by the post-election violence in 2008. Please also provide information on the situation of women and girls living in urban slums and informal settlements, and the measures being taken to ensure access to safe drinking water, sanitation facilities and health services (CEDAW/C/KEN/CO/7, para. 43). In addition, please provide information on measures being taken to address the incidence of poverty among disadvantaged groups of women, in particular female-headed households (ibid., para. 35). What measures are being taken to ensure access to ancestral lands by indigenous women and girls, such as those in the Endorois community? Please also provide information on the specific programmes and policies in place aimed at ensuring access to education, employment, housing and health care, in particular sexual and reproductive health care for indigenous women and girls, and women and girls with disabilities. What steps are being taken to combat the forced sterilization of women and girls with disabilities? Please provide data on the number of women and girls with disabilities who have benefited from the various employment and entrepreneurship initiatives such as the Uwezo Fund, the Youth Enterprise Development Fund, the Women Enterprise Fund and the bill on access to government procurement opportunities.

Marriage and family relations

22. It is indicated in paragraph 30 of the report that the Marriage Act of 2014 recognizes polygamous marriages, whereas article 45 (3) of the Constitution provides that parties to a marriage are entitled to equal rights at the time of marriage, during marriage and at its dissolution. Please state the measures being taken to bring the Act into conformity with the Constitution. Please also state the steps being taken to eradicate polygamous marriages, and to ensure that, upon the dissolution of marriages entered into under Islamic and customary traditions, women are protected against discrimination. It is indicated in the report that the Matrimonial Property Act of 2014 is discriminatory because it defines matrimonial property as only property that is jointly owned by the spouses and disallows women the right to marital property upon the death or divorce of their spouse by requiring them to prove their contribution towards the acquisition of such property during the marriage (para. 191). In addition, rules governing intestate succession create a hierarchy for inheritance that directly discriminates against women and girls, and section 39 of the Law of Succession Act renders void a widow's inheritance rights if she remarries (para. 192). Please provide information on the steps that are being taken to address these discriminatory laws and practices with regard to matrimonial and inherited property.

Optional Protocol and amendment to article 20 (1) of the Convention

23. Please indicate any progress made with respect to the ratification of the Optional Protocol to the Convention and acceptance of the amendment to article 20 (1) of the Convention.